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THE LEGALITY OF THE PACIFIC BLOCKADE III*

FRENCH BLOCKADE OF FORMOSA, 1884

The exact status of the French blockade of Formosa in 1884 has received considerable attention from various writers. It arose out of the alleged failure of China to evacuate Tonkin in accordance with treaty engagements and a demand for indemnity for the killing of French soldiers. Calvo says that the Government of the United States made futile overtures to the Cabinet of Ferry for arbitration.¹²⁹

Admiral Courvet on October 20, 1884, issued a notice that the ports and roadsteads of the north and west coasts of the island of Formosa would be placed in a state of blockade from that day and that a delay of three days would be given to friendly vessels to complete their loading and depart. All attempted violations would be proceeded against "conformably to international law and existing treaties." This notice was formally communicated to Earl Granville by M. Waddington, the French Ambassador at London on October 22. On October 31st, Granville, in a communication to Waddington pointed out that up to that time both France and China had refrained from asserting or exercising those belligerent rights of visit and search over neutral vessels on the high seas which are incident to a state of war and that under these circumstances the British Government on its side had abstained from issuing the usual proclamation of neutrality. He proceeded to add that the notification of the blockade indicated an intention on the part of France of asserting belligerent rights over neutral vessels. If however, it should still be the wish and intention of the French Government to refrain altogether from exercising over neutral vessels the belligerent right of visit and capture while warning them off, and preventing all access by them to the blockaded ports of Formosa, the British Government would consider it unnecessary to modify its existing instructions, which were confined to the observance of the Foreign Enlistment Act.¹³⁰ On November 5, Waddington replied that the Government of the Republic had no intention of asserting belligerent rights as against neutrals but only of maintaining an effective blockade by driving away or capturing vessels which attempted to violate it. The French Ambassador added that such blockades could be legitimately established

* The second part of this article was published in the March 1921 issue of the COLUMBIA LAW REVIEW at page 227.

¹²⁹ 3 Calvo, *Le Droit International* (5th ed.) 539.

¹³⁰ 76 *British State Papers* (1884) 424.

without war and that they had been resorted to by both Great Britain and France under similar circumstances and their validity recognized by the tribunals of both countries.¹³¹ To this Granville replied on November 11, that he did not deem it "expedient or necessary to discuss the circumstances and conditions under which what is termed a pacific blockade might be established consistently with the principles of the law of nations," but that he could not admit that the blockading of the ports of Formosa was to be considered in the light of a pacific blockade, actual hostilities having already taken place on a large scale and of a character quite inconsistent with a state of peace. The note concluded with the statement that the British Government was quite prepared to recognize the blockade as a belligerent blockade carrying with it the usual belligerent rights as against neutrals. Nevertheless there was no disposition to aggravate the situation by issuing a formal notice of neutrality and enforcing all the strict rights of neutrals "so long as the hostilities are confined to a particular locality and both France and China refrain from exercising the belligerent rights of visit and capture on the high seas."¹³² There the matter rested for a few days, until on the 21st of November, the Chinese Legation addressed a letter to Granville reciting its understanding of the British position, which was in effect that, under the conditions hereinbefore recited, the British would not issue any proclamation of neutrality but would merely insist upon the observance of the Foreign Enlistment Act. This Act was assumed to affect not only Hong Kong but all British ports and "consequently ships belonging to the French and Chinese naval and military services will not be allowed to equip, that is to coal or do any other thing which might adapt them for the sea, or increase their warlike force, either at Hong Kong or at any of those places in Her Majesty's Dominion, where ships proceeding to or returning from, China are accustomed to call."¹³³ In reply on November 26, Granville agreed to this position and stated that the act would be enforced not only at Hong Kong but at all British ports.¹³⁴ The result of this triangular diplomatic exchange was a sort of compromise or *modus vivendi* between the two Governments of Great Britain and France, which continued for about two months but ultimately broke down. Rumors and formal official complaints by the Chinese Government of French violations, together with the application from British Colonial governors for more detailed instructions, led the Foreign Office to issue such instructions "in order to protect ourselves from very serious pecuniary claims."¹³⁵ On February 2, 1885, Granville transmitted to the British Ambassador at Paris, a copy of the instructions to the Colonial governors regulating

¹³¹ *Ibid.* 425.

¹³² *Ibid.* 428-29.

¹³³ *Ibid.* (1885) 432.

¹³² *Ibid.* 426-27.

¹³⁴ *Ibid.* 431.

the making of repairs and the obtaining of coal and supplies by belligerent vessels in accordance with the recognized rules of belligerency. Subsequently the British Foreign Office inserted a notice in the London Gazette dated February 11, announcing that it was the intention of the French Republic during the continuance of hostilities between France and China, to exercise the rights of belligerents "which are recognized by the law of nations, including the right to search neutral vessels on the high seas for contraband of war."¹³⁶ A telegram from the British Commodore at Hong Kong dated April 18, to the Foreign Office at London reported that he had been notified by the French Commander-in-chief that the blockade of the coasts and ports of Formosa by French naval vessels had been raised.¹³⁷

This blockade, commonly classified as pacific, seems to partake of a dual character. Almost from the start, Great Britain insisted that the hostilities amounted to a state of war. If, in its earlier stages, by virtue of the understanding between the Cabinets of Paris and London, the blockade can fairly be regarded as pacific, it is certainly true that the British attitude ultimately forced France to proceed under the rules governing an out-and-out belligerent status.

COLLECTIVE BLOCKADE OF GREECE, 1886

The collective blockade by the powers of the coast of Greece in 1886 grew out of the hostile attitude of Greece toward Turkey on account of the union of Bulgaria and Eastern Roumelia. This hostile attitude was deemed by the powers to be a menace to the peace of Europe and on January 5, 1886, the Russian Minister at London proposed to the Marquis of Salisbury that representations should be made at Athens, Belgrade, and Sofia in favor of demobilization.¹³⁸ Matters proceeded rapidly. On January 11, the envoys of Great Britain, Russia, France, Germany, Austria-Hungary and Italy at Athens presented a collective note inviting the Greek Government to proceed with Servia and Bulgaria to an immediate and simultaneous demobilization "which the Ottoman Government is altogether disposed to imitate."¹³⁹ The Greek Government refused. Anticipating this action, on January 18, the British Ambassador at Berlin was instructed to propose to Prince Bismarck to act jointly with Great Britain, and other governments, if they were willing to join, if not, without them, in intimating to the Greek Government that a naval attack by Greece on Turkey would not be permitted. To this Bismarck agreed.¹⁴⁰ The evidence indicates that the Cabinet at Athens had little hope of making headway against the Ottoman forces by land, but were taking active steps to strengthen their naval armaments. The other pow-

¹³⁶ *Ibid.* 435.

¹³⁸ 77 *British State Papers* (1886) 643.

¹³⁹ *Ibid.* 646.

¹³⁷ *Ibid.* 1080.

¹⁴⁰ *Ibid.* 647.

ers, including France at this stage, signified their willingness to join in this protest, however, and on the 24th of January a collective note, from the representatives of the six powers before mentioned, was sent to M. Delyanni stating that, in the absence of any just ground for war on the part of Greece against Turkey and in view of the injury which would be caused to the commerce of other nations, a naval attack by Greece on Turkey would not be permitted. This note followed closely the draft of the British Minister, except that the word "admise" was substituted for "permise".¹⁴¹ The reply was a protest against any interference with the liberty of action of the Greek naval forces.¹⁴² The Greek Government did not budge from its stand nor was there any relaxation in military preparations. Finally, a joint proposal was made to establish a blockade of the east coast of Greece and of the gulf of Corinth as against *Greek* vessels and to give notice that any such vessels attempting to violate it would render themselves liable to capture. On April 26, an ultimatum was delivered to the Cabinet at Athens by the five Powers of Great Britain, Russia, Germany, Austria-Hungary and Italy.¹⁴³ France in the meantime had dropped out. She was willing to join in the protest but unwilling to send French ships of war to Grecian waters. The Greek Government, in fact, claimed later that it had acted upon the advice of France.¹⁴⁴ On May 8, another collective note was issued, stating that the response of the Athens cabinet to the collective note of the 26th of April not having been satisfactory, a blockade of the coast of Greece against *Greek* vessels had become effective from the date of the declaration. In the face of this demonstration, the Greek Cabinet surrendered. A decree of disbandment of Greek troops and for the discharge of naval recruits was issued on May 24.¹⁴⁵ A collective notice of the raising of the blockade which had thus lasted just a month followed on June 7. The whole action was frankly one of intervention "to put a stop to the state of tension created by the refusal of Greece to conform to the wishes of Europe."¹⁴⁶

BLOCKADE OF ZANZIBAR, 1888

The blockade of Zanzibar instituted jointly by Great Britain and Germany on December 2, 1888 was officially declared to be "a blockade against the importation of munitions of war and the exportation of slaves only." In a notice issued a few days earlier on November 29, the British and German Rear-Admirals declared that all vessels to whatever nation they belonged were liable to visit and search but that vessels engaged in ordinary trade would be allowed

¹⁴¹ *Ibid.* 655.

¹⁴² *Ibid.* 676.

¹⁴⁵ *Ibid.* 695-96.

¹⁴² *Ibid.* 658.

¹⁴⁴ *Ibid.* 666.

¹⁴⁶ *Ibid.* 662.

to continue their voyage after having been visited.¹⁴⁷ Portugal, on December 6,¹⁴⁸ and Italy on December 19,¹⁴⁹ announced their participation in this blockade. The Sultan of Zanzibar had prohibited dealing in slaves or munitions of war but a rebellion had broken out against his authority. He was nevertheless reluctant to sanction a blockade by the Western Powers,¹⁵⁰ but he ultimately did so and officially announced that the blockade "is done with our full consent and sanction."¹⁵¹ The German Government was agreeable to the establishment of a mixed court for the purpose of disposing of prizes but Lord Salisbury declined on the ground that there was a lack of power under the law and stating that the necessary steps had already been taken to establish a special British Prize Court at Zanzibar.¹⁵² The British notification of the raising of the blockade declared to be to annulled from noon the 1st of October, 1889. The senior German naval officer joined in this proclamation adding a rider thereto to the effect that the importation of munitions of war in the German sphere was still prohibited.¹⁵³ The status of this blockade is clearly somewhat anomalous. It was, to be sure, not instituted by a territorial sovereign against a portion of his own territory in order to reassert his authority but it had certainly his official approbation. Holland declares that "the operation was in reality a measure of high international police, exercised, directly or indirectly, by all the Powers of Western Europe who were interested in the locality, for the prevention of a traffic generally recognized by them as cruel and immoral."¹⁵⁴

FRENCH BLOCKADE OF SIAM, 1893

The French blockade of Siam in 1893 was of brief duration—it lasted only about a week—but long enough to create a state of tension between France and Great Britain which did not relax for some time. The controversy between France and Siam was fundamentally a boundary dispute, though other grievances subsequently developed—the land in debate lying between Siamese and Tonquin territory. On November 6, 1887, the British representative at Bangkok reported: "It is too early yet to say how far the French rights may extend, but it is probable that they will claim as the proper boundary the water-shed between the Mekong River and the streams which fall into the Gulf of Tonquin."¹⁵⁵ The British interest concerned the Upper Mekong, which formed the boundary between Tonquin and Burmah, and the correspondence with the French Government

¹⁴⁷ 81 *British State Papers* (1889) 97.

¹⁴⁸ 79 *British State Papers* (1888) 384.

¹⁴⁹ 81 *British State Papers* (1889) 100.

¹⁵⁰ *Ibid.* 89.

¹⁵¹ *Ibid.* 88.

¹⁵² *Ibid.* 94.

¹⁵³ *Ibid.* 132.

¹⁵⁴ Holland, *Studies in International Law* (1898) 139.

¹⁵⁵ 87 *British State Papers* (1887) 192.

extended over some years. In 1890 a Franco-Siamese delimitation commission was named, but its labors to bring the dispute into permanent adjustment were abortive. Claims of alleged ill treatment of French officers and subjects further complicated matters. On July 20, 1893, the British representative at Bangkok cabled the Earl of Rosebery that the following ultimatum had been presented by the French to the Siamese Government, the latter being given forty-eight hours within which to comply:

"1. Recognition of the rights of Cambodia and Annam to left bank of River Mekong and the islands.

"2. The Siamese shall evacuate, within one month's time, any posts which are there held by them.

"3. Satisfaction for the various acts of aggression against French ships and sailors in the River Menam and against French subjects in Siam.

"4. Pecuniary indemnities to the families of the victims, and punishment of the culprits.

"5. For various damages inflicted on French subjects, indemnities of 2,000,000 fr.

"6. As a guarantee for the claims under clauses 4 and 5 the sum of 3,000,000 fr. in dollars shall be at once deposited, or, in default, the farming of the taxes of Siemrep and Battambang shall be assigned to the French.

"In the event of the non-acceptance of these terms the French Minister will leave Bangkok and the blockade of the coast will at once take place."¹⁵⁶

The answer was a virtual agreement to meet every demand, except the first, as to which the King of Siam pointed out that no explicit definition of the rights of Cambodia and Annam on the Mekong had ever been made to the Siamese Government, but that he would nevertheless agree to cede to France the country lying to the south of the 18th parallel of latitude and to the east of the Mekong.¹⁵⁷

The first notification of the blockade was issued on the 26 of July. The second amended notice, which was somewhat in amplification of the first and apparently extended the blockade area, was issued on the 29 of July by Admiral Humann. The notice of the raising of the blockade by the same official was dated the 3rd of August.¹⁵⁸ On July 28, the British representative at Bangkok cabled Rosebery, that the conditions laid down by France had been accepted by Siam "without reserve".¹⁵⁹ The British Government promptly took steps through the Marquis of Dufferin at Paris to ascertain the status of the blockade but the formal notice of its raising was delayed for several days, which contributed somewhat to the irritation.¹⁶⁰ Additional terms to the original French ultimatum were also imposed, which were accepted by the Siamese Government.¹⁶¹

¹⁵⁶ *Ibid.* (1893) 262-63.

¹⁵⁸ *Ibid.* 351-53.

¹⁶⁰ *Ibid.* 293.

¹⁵⁷ *Ibid.* 265.

¹⁵⁹ *Ibid.* 282.

¹⁶¹ *Ibid.* 293.

The British attitude with respect to this blockade closely followed the Formosan precedent. On July 28, Dufferin telegraphed Rosebery that the French Foreign Minister had informed him that the blockade was "*un blocus pacifique*" to which Roseberry replied on the same day:

"If it is proposed, under the so-called 'pacific blockade', that neutral vessels shall be treated as liable to capture and condemnation, Her Majesty's Government cannot do otherwise than look upon such a blockade, when formally notified, as constituting a state of belligerency.

"As neutrals, their duty in such circumstances would seem to impose upon them the necessity of placing the customary restrictions on the facilities to be afforded to French ships of war which may visit British ports, especially such ports as are in the immediate vicinity of that part of the Siamese coast blockaded by the French squadron."¹⁶²

A little later on August 4, Dufferin advised Rosebery that in response to his suggestion that the notification of a blockade without any declaration of war might raise a serious question of international law, M. Duvelle, cited various instances of alleged pacific blockades in support of the French action. The instances cited are familiar, but it is interesting to note that one of them was the then recent example in 1876 where the commandant of the British naval forces at the Cape of Good Hope and the West coast of Africa had under very analogous circumstances established on the coast of Dahomey a blockade which lasted for several months.¹⁶³

In one important respect the Siamese parallel to the Formosan blockade fails. The actual hostilities would hardly of themselves, as in the case of China, justify the charge that a state of war existed, though it would appear from an official report that there was some random fighting of a relatively unimportant character.¹⁶⁴ That British commerce was seriously menaced by the blockade of Siam seems clear. Upon this point we have very competent testimony by the Earl of Rosebery. On July 23, he wrote:

"According to the latest information in our possession, 87 per cent. of the whole shipping trade at Bangkok as regards tonnage, and 93 per cent. as regards the value of cargoes, is British. This may, to use M. Duvelle's expression, be the accident of the situation, but it is one which very naturally carries much weight in this country, and would have even more weight in the event of the French declaring a blockade of the Siamese coasts."¹⁶⁵

Four days later when the blockade had become an accomplished fact,

¹⁶² *Ibid.* 281-82.

¹⁶⁴ *Ibid.* 305.

¹⁶³ *Ibid.* 297.

¹⁶⁵ *Ibid.* 264.

Rosebery wrote that "practically" it was "solely directed against British commerce."¹⁶⁶

The French Government had asserted that the blockade was not to commence before July 31.¹⁶⁷ The announcement at Bangkok that it was to begin on the 26 of July was therefore attributed to a telegraphic error. Meanwhile, on July 29, the British Minister at Bangkok cabled that a vessel arriving from Hong Kong and carrying Chinese laborers had been stopped at the bar and forced to remain with her cargo outside, thus causing very heavy loss to her consignees, though her captain made an offer, which was refused, to enter and discharge her cargo and return outside at once.¹⁶⁸ The vessel turned out to be of British ownership, but before this was established, Rosebery notified Dufferin that such a proceeding was a strange commentary on the theory advanced by the French Government since it was clear that the blockade had actually begun and was being rigorously enforced.¹⁶⁹ The French Admiral had originally given notice that the blockade arrangements concerning details of departure applied equally to ships of war and merchant vessels. On being advised of this Rosebery telegraphed Dufferin that the British Government could not allow British subjects to be left to the mercy of "an unruly Oriental population and that therefore they cannot withdraw Her Majesty's ship now stationed off the city."¹⁷⁰

With the collapse of the feeble Siamese resistance, the London and Paris governments signed a protocol on July 31, for the establishment of the neutral zone between British and French possessions, the limits of which were to be settled by subsequent negotiation.¹⁷¹ There also remained the details of the Franco-Siamese treaty. Both matters dragged for some months and were productive of considerable friction.

Söderquist¹⁷² criticizes Professor Holland's mention of this blockade on the ground that it was only the menace of a blockage. He includes it with examples of pacific blockades which were projected and never executed, as that of the river and port of Canton, of which official public notice was given on September 11, 1839. Five days later, on September 16, the English commandant at Hong Kong gave a counter-order declaring that until further notice the blockade notified by him on the 11 would not be established and that "vessels continuing to enter will be permitted to pass, and unobstructed."¹⁷³ The demonstration of the allied fleets before Dulcigno accompanied by threats of a blockade to force Turkey to cede that port to Monte-

¹⁶⁶ *Ibid.* 277.

¹⁶⁸ *Ibid.* 284.

¹⁷⁰ *Ibid.* 287.

¹⁷² Söderquist, *Le Blocus Maritime* (1908) 98.

¹⁷³ 29 *British State Papers* (1839) 1069.

¹⁶⁷ *Ibid.* 285.

¹⁶⁹ *Ibid.* 285.

¹⁷¹ *Ibid.* 289.

negro, in accordance with the provisions of the Treaty of Berlin, is also mentioned in the same connection. Söderquist is clearly in error with respect to Siam. The blockade was not only officially proclaimed, but Lord Rosebery's protest, already mentioned, is evidence that it was rigorously enforced.

BLOCKADE OF CRETE, 1897

The blockade of Crete by the six great Powers in 1897 was primarily in the nature of an intervention to quell an insurrection there. The invasion of the island, which was then a part of Greek territory, by Colonel Vassos in February of 1897 and the continued refusal of the Greek Government to withdraw its troops brought the Powers face to face with the urgent need of taking strong measures. The plea that appealed so strongly to the European Concert eleven years before—that Greece should not be allowed to endanger the peace of Europe—was again invoked. Confronted with the dilemma of being unable to restore order, especially in the interior of the island, without aggressive military action, which, as Lord Salisbury said, "would have amounted to actual war against the Government of Greece,"¹⁷⁴ the Powers resorted to a blockade in order to cut off Greek reinforcements. The German Government, in harmony with its established foreign policy of rapprochement with Turkey, was especially active in urging concerted action to curb the Greek pretensions. The Emperor on February 17, visited the British Ambassador in Berlin and informed him that the defiance by Greece of the great Powers "made them the laughing stock of Europe" and was "insupportable." He protested against "such lamentable weakness" and threatened to withdraw the German flag from the Mediterranean.¹⁷⁵ The German proposal was to blockade the Greek coast and the Piraeus as had been done in 1886, but this program did not meet with the approval of most of the other Powers, notably Russia and Great Britain. The British Government was in fact opposed to any blockade at all until the Powers had made up their minds as to the future condition of the island of Crete. Discussions went forward with regard to Cretan autonomy and on the 2nd of March, a collective note was presented to the Greek Government signed by Great Britain, Germany, Austria-Hungary, France, Russia and Italy, serving notice that Crete was on no condition to be annexed to Greece and outlining the proposal for endowing the island with an autonomous regime.¹⁷⁶ A similar note was presented to the Porte.¹⁷⁷ On March 11, Lord Salisbury telegraphed the British ambassador at Paris that he was quite ready to agree to the proclamation of Cretan autonomy in accordance with M. Hanfaux' opinion but he still questioned

¹⁷⁴ 91 *British State Papers* (1897) 434.

¹⁷⁵ *Ibid.* 128, 90 *British State Papers* 308.

¹⁷⁶ *Ibid.* 175.

¹⁷⁷ *Ibid.* 180.

the wisdom of blockading the Piraeus except as a last resort. Developments came rapidly.

The British notification of the blockade was dated March 19, and gave notice that it would become effective for the island of Crete, commencing the 21st of March at 8 a. m. by joint action of the admirals of the naval forces of the six Powers. The blockade was to be general for all ships under the Greek flag. Ships of the six Powers or neutral Powers were allowed to enter into ports *occupied by the Powers* and land their merchandise but only if it was *not* for the Greek troops or the interior of the island. It was significantly added, "These ships may be visited by the ships of the international fleets."¹⁷⁸ On March 28,¹⁷⁹ the Austrian Government proposed concerted measures for the blockade of the Greek Littoral and the appointment of a military governor of Crete with authority to declare a state of siege.

To this program, Lord Salisbury gave his assent in a telegram to Sir N. O'Connor, the British Ambassador at St. Petersburg on March 31.¹⁸⁰ The necessity of giving official notification both to Greece and to neutrals of the proposed extension and the decision of the allied admirals not to commence the blockade before the arrival of reinforcements operated to delay matters until after the outbreak of actual hostilities between Greece and Turkey. On April 19, O'Connor reported that the Russian Foreign Office was of the opinion that the attitude of the Powers toward Greece remained unaltered by the outbreak of war and that Crete was under the protection of the Powers and must be looked upon as neutral ground in consequence. The opinion was further expressed that the Powers should abstain from any interference between the belligerents until mediation was requested by one or the other. The tide of war presently turned against the Greeks and they declared their readiness for mediation on the 11 of May.¹⁸¹ In the offer of mediation made to the Porte it was stated by the Ambassadors of the Powers that the Greek Government consented to proceed to evacuate Crete with the least possible delay and recognize the autonomous regime of the island. The armistice was signed on May 19. The preliminaries of peace were finally signed on September 18, 1897¹⁸² and the definite treaty of peace was signed on December 4.¹⁸³ The blockade was raised from the 5 of September but the importation of arms and munitions of war continued to be absolutely prohibited.¹⁸⁴ Wheaton says of this blockade, that the whole incident is "an illustration of the diffi-

¹⁷⁸ 89 *British State Papers* (1897) 446.

¹⁷⁹ 91 *British State Papers* (1899) 204.

¹⁸⁰ *Ibid.* 208.

¹⁸² *Ibid.* 425.

¹⁸⁴ *Ibid.* 113.

¹⁸¹ *Ibid.* 427.

¹⁸³ *Ibid.* 465.

culties attending pacific blockade," and that had events after the outbreak of the war taken a different course it is "difficult to see how powers professedly neutral could have forbidden one belligerent access to the territory of another."¹⁸⁵ While the blockade by its terms was especially directed against ships under the Greek flag, it was not restricted to them. Neutral ships could only enter into the ports occupied by the powers and then only in the event that their merchandise was not destined for the Greek troops or for the interior of the island. Furthermore the right of visit and search was asserted. Measured by the tests laid down by Great Britain in the cases of the Formosan and Siamese blockades, this was a belligerent blockade. The representatives of the six powers at Washington notified the Secretary of State on March 24. Secretary Sherman in his reply two days later confined himself to "taking note of the communication, not conceding the right to make such a blockade as that referred to in your communication, and reserving the consideration of all international rights and of any question which may in any way affect the commerce or interests of the United States."¹⁸⁶ Professor Holland asserts that this blockade, although instituted by the Great Powers, took place with the approbation of the Sultan of Turkey and that this fact causes it to resemble the blockade of Zanzibar in 1888.¹⁸⁷

JOINT BLOCKADE OF VENEZUELA, 1902

The action taken by Great Britain, Germany and Italy against Venezuela in 1902 has usually been referred to as an instance of a pacific blockade, though the evidence is ample that the British Government, anyway, from the start was prepared to concede that the blockade was really of the belligerent kind. It has sometimes been asserted that the joint action of the Powers was of German instigation and that its real meaning was a challenge to the Monroe Doctrine. Joint action was perhaps a matter of German inspiration, but there is evidence that, if this be true, German diplomacy merely took advantage of a favorable opening. On July 23, 1902, Lansdowne wrote that the German ambassador had spoken to him that day about the state of affairs in Venezuela and had been informed that it was the intention of the British Government to obtain satisfaction for the claims of its subjects but that it was quite ready to confer with a view to joint action. A memorandum of the Foreign Office on existing causes of complaint against Venezuela, dated July 20, 1902, recited specific outrages and grounds of complaint against Venezuela beginning with the action of the gunboat *Augusto* in seizing and deporting certain British subjects in 1901. It was asserted also that

¹⁸⁵ Wheaton, *International Law* (4th ed. 1904) 415.

¹⁸⁶ 7 Moore, *International Law Digest* (1906) 139.

¹⁸⁷ Holland, *op. cit.* 147.

British subjects and companies had large claims against the Venezuelan Government. Germany, on her part, demanded the settlement of claims arising out of the Venezuelan civil war which lasted from 1898 to 1900, amounting approximately to 1,700,000 francs. Count Metternich suggested in a memorandum dated November 13, 1902 that these should be regarded as "first line claims" together with the claims on account of the illegal removal and destruction of English merchant ships.¹⁸⁸ The other demands of Germany as to which some suitable guarantee was to be asked for relating to the settlement of the claims of the Disconto Gesellschaft, amounting to approximately 41,000,000 francs. On the same day, the British ambassador at Washington reported that Secretary John Hay had stated in answer to the British explanation of the affair that the United States Government, although regretting that European powers should use force against Central and South American countries, could not object to their taking steps to obtain redress for their subjects, provided that no acquisition of territory was contemplated.¹⁸⁹ On December 3, the British ambassador at Rome cabled that the Minister for Foreign Affairs had taken steps to inform the United States Government that Italy might find it necessary to take coercive measures and had received a very satisfactory reply.¹⁹⁰ In effect, Italy asked to be allowed to participate in measures contemplated by Great Britain and Germany. The British and German ultimatums were delivered on December 7.

The British notification of the blockade of Venezuelan ports was dated London, December 20, and announced the blockade from that day of the ports of La Guayra, Carenero, Guanta, Cumana, Carupano, and the mouths of the Orinoco. The German blockade related to the ports of Puerto Cabello and Maracaibo. The Italian notice announced that that Government had "resolved to take part, with their naval forces, in the blockade of the Venezuelan ports which has been declared by the British and German Governments."¹⁹¹ From instructions issued to officers of the British Admiralty on December 11, 1902, neutral merchant vessels in the immediate neighborhood of a blockaded port were to be warned and, if afterwards, in defiance of the warning they attempted to communicate with any of the blockaded ports, they were to be seized and handed over to a prize court to be established at the Port of Spain, Trinidad. Venezuelan merchant vessels and merchant vessels sailing under other than the Venezuelan flag and proved to be in the service of the Venezuelan Government were to be seized and treated as prizes of war.¹⁹²

Westlake says that such instructions in the mouth of any other

¹⁸⁸ 95 *British State Papers* (1902) 1083.

¹⁸⁹ *Ibid.* 1084.

¹⁹¹ *Ibid.* 425-27.

¹⁹⁰ *Ibid.* 1101.

¹⁹² *Ibid.* 1114-15.

government might be "ambiguous" but coming from the British Government, after the position taken by it in the Formosan blockade of 1884, they could only be interpreted as "recognizing that a state of war was being entered on."¹⁹³ The evidence tends to support this view. A year earlier the German ambassador at Washington, in acquainting the United States Government with the state of affairs, expressly disavowed any purpose on the part of Germany permanently to occupy or acquire Venezuelan territory, but intimated a probable resort to coercion. In a promemoria, dated December 20, 1901, he said:

"The most important measure of coercion—that is, the blockade of Venezuelan harbors—would have to be carried through without a declaration of war preceding it. The blockade would therefore be a peace blockade. Such a blockade would touch likewise the ships of neutral powers, inasmuch as such ships, although a confiscation of them would not have to be considered, would have to be turned away and prohibited until the blockade should be raised. In the same manner, European States have proceeded on such occasions, especially England and France."¹⁹⁴

Referring to this declaration on December 12, 1902, Secretary Hay directed Ambassador Tower at Berlin to say to the German Government that the United States adhered to the position taken by it in relation to the Cretan blockade of 1897 and that therefore it did not acquiesce in any "extension of the doctrine of pacific blockade which may adversely affect the rights of states not parties to the controversy or discriminate against the commerce of neutral nations."¹⁹⁵ Two days later Mr. Tower reported that "Germany was at first inclined to a pacific blockade but that Great Britain insisted on establishing a warlike blockade," and that there was "no intention whatever to declare war or to proceed beyond the establishment of warlike blockade."¹⁹⁶ Thereupon on December 16, the Ambassador was directed to ascertain what was intended "by warlike blockade without war, especially as regards neutrals". To this the German Minister for Foreign Affairs answered on December 18, that, "although it is not intended to make a formal declaration of war, a state of war actually exists and the warlike blockade will be accompanied by all the conditions of such a measure and with the same effect as if war had been formally declared."¹⁹⁷

Coincidentally with the inquiries at Berlin, the American Embassy at London was seeking information in that quarter. On December 17, the American Chargé stated that he had just asked the Minister for Foreign Affairs about the German Ambassador's statement regarding "warlike blockade" and had been told in reply that

¹⁹³ 2 Westlake, *International Law* (2nd ed. 1913) 15.

¹⁹⁴ *Foreign Relations of the United States* (1901) 196.

¹⁹⁵ *Ibid.* (1903) 420.

¹⁹⁶ *Ibid.* 421.

¹⁹⁷ *Ibid.* 423.

"It was used, probably, in contradistinction to so-called pacific blockade, to which Germany wanted Great Britain to agree, chiefly because blockade *jure gentium* is an act of war, upon which Germany cannot enter without consent of the Bundesrath. The British Government absolutely declined this proposition, and Germany consented two days ago to a regular blockade *jure gentium*." ¹⁹⁸

On December 18, the Chargé cabled that on the day before in response to a question in Parliament "Has war been declared?" the Prime Minister answered "Does the honorable and learned gentleman suppose that without a state of war we could take the ships of war of another nation and blockade its ports?". It was in this same dispatch that Mr. Balfour was quoted as saying that he agreed with the United States in thinking that there could be no such thing as a pacific blockade. Professor Moore points out that the United States did not take the ground that there could "be no such thing as a pacific blockade", but that it did not acquiesce "in any extension" of the doctrine of pacific blockade so as to affect the rights of states not parties to the controversy. ¹⁹⁹ Such was the exact tenor of the instructions sent to London as well as to Berlin, but it is interesting to note that Mr. Henry White, our Chargé, in reporting formally on December 19 upon the incident in the House of Commons stated that "His Majesty's Government *agree with ours* in thinking that 'there can be no such thing as a pacific blockade.'" ²⁰⁰

Meanwhile even before the blockade was formally declared, the Venezuelan Government sensing impending retribution expressed its desire for arbitration, which was earnestly pressed by the United States upon the consideration of Great Britain, Germany and Italy. The blockading powers in a preliminary way reserving however some of the claims as "a kind which no government can refer to arbitration," ²⁰¹ suggested that the President of the United States undertake the task of arbitrator. Mr. Roosevelt labored from the beginning to have the matter referred to the Hague and this was ultimately done. Before the end of the year President Castro of Venezuela recognized "in principle" the claims of the allied Powers and bowing, as he said, "to a superior force", sent the American Minister at Caracas, Mr. Bowen, to Washington duly authorized to settle the whole question as the representative of Venezuela. ²⁰² By the terms of the protocols signed in Washington on the 13th of February, 1903, by Mr. Bowen, and the representatives of Great Britain, Germany and Italy, ²⁰³ the Venezuelan Government contracted to pay at once, the sum of 5500 pounds sterling to each of

¹⁹⁸ *Ibid.* 454.

¹⁹⁹ 7 Moore, *op. cit.* 141.

²⁰⁰ *Foreign Relations of the United States* (1903) 457.

²⁰¹ 95 *British State Papers* (1902) 1131.

²⁰² 96 *British State Papers* (1903) 439.

²⁰³ *Ibid.* 99, 803, 1172.

the Governments of Great Britain, Germany and Italy. This was on account of certain "first line claims" so-called. Certain other claims were referred to a Mixed Commission consisting of one national on each side, the umpire in case of disagreement to be named by the President of the United States. Provision was made for the reference of other questions to the Hague tribunal. Immediately upon the signature of the protocol, provision was made for the raising of the joint blockade of Venezuelan ports. Each of the blockading powers stipulated to restore the captured Venezuelan men-of-war and merchant vessels. This provision, however, was coupled with a release from any demand for indemnity of every kind.

It is interesting to note in this connection that the British protocol, unlike its German and Italian prototypes, contained a clause that "inasmuch as it may be contended that the establishment of a blockade of Venezuelan ports by the British naval forces has, *ipso facto*, created a state of war between Great Britain and Venezuela," certain prior treaties were deemed to be renewed and confirmed or provisionally renewed and confirmed, pending a new treaty of amity and commerce.²⁰⁴ Thus to the end, the door to the British contention that the blockade was never a pacific blockade was left conveniently ajar.

It is true that embargo and the seizure of ships on the high seas, unaccompanied by any blockade of a defined coast, seems to be regarded by some writers as a form of pacific blockade and in this sense the reprisals against Holland and Brazil are sometimes classified. Such a classification is manifestly somewhat latitudinous. It violates the underlying conception of a blockade, which imports fundamentally the denial by a competent naval squadron of access for vessels (except such as may be excepted) to the specified ports or defined coast of an offending state.

Since 1902 there has been no act of reprisal partaking of the nature of the pacific blockade unless we accept the action of the United States in the harbor of Vera Cruz in 1914 and the recent Italian demonstration before Fiume. In the case of Mexico, President Wilson asked for and got the assent of Congress to take such steps as were necessary to secure an apology from Huerta. Such hostile acts as were undertaken did not contemplate any blockade of Vera Cruz and apparently the inconvenience to neutral shipping, if any, was not serious enough to justify any formal complaint. But the situation at Fiume growing out of the D'Annunzio occupation and the consequent blockade by the Italian navy is not easy to classify. The blockade can hardly be described as belligerent; neither is it pacific in any generally recognized sense of this somewhat indefinite term. In view of the suspended status of Fiume, it cannot be said that

²⁰⁴ 96 *British State Papers* (1903) 100.

this blockade was established by Italy against any portion of its own territory and hence regarded as an internal police regulation undertaken by a sovereign to quell insurrection of his own subjects. As a blockade ostensibly established to adjust international differences it is something more than a mere internal police regulation. The situation is indeed anomalous.

Conceding now the force of Geffcken's criticisms that the pacific blockade was originally an illicit expedient to coerce weak states without assuming the responsibilities inseparable from a state of war, this circumstance in itself by no means puts the practice outside of the pale of international law. The law of nations is not inflexible and immutable. Like municipal law it does not stand still but is subject to readjustment to meet the needs of the Society of Nations. To grant that incidents connected with the pacific blockade in the past cannot be justified—such, for example, as the seizure and condemnation of neutral vessels—does not involve the admission that the blockade may not be legally conducted. Stripped of certain obvious early abuses, the general proposition of the Heidelberg Institute that "the establishment of a blockade without war is not contrary to international law" will hardly now be seriously challenged. But much remains still for settlement. The rules under which the pacific blockade may be conducted are in a state of greatest confusion—in fact they have never crystallized.

Our historical review makes it quite plain that the method of enforcement has been far from uniform. Great Britain, France, Italy, Germany, Russia, and possibly Sweden, through separate or concerted action, have participated at different times in pacific blockades and the policy of no one of these powers can well be said to be definitely fixed. Great Britain, notably, has taken conflicting positions, but like France, she has invoked this particular weapon more frequently than other powers. The question of notice; the treatment of vessels of the *quasi* enemy, whether they may be temporarily sequestered only and returned when satisfaction is secured; whether neutral vessels may be detained by the exercise of force if necessary, in case a warning is unheeded, or whether they may not be interfered with at all—all these are matters of the first importance.

Briefly to recapitulate in order to bring more sharply into focus the great diversity of practice, the formal British notification of the blockade of the ports of Norway was given on the 29 of April, 1814. It asserted that "from this time all the measures authorized by the Law of Nations will be adopted and executed with respect to all vessels which may attempt to violate the said blockade."²⁰⁵ There is

²⁰⁵ 1 *British State Papers* (1814, Part II) 1277.

no record of any official notice of the joint blockade of the coasts of Greece in 1827. The British notice of the measures against the Netherlands in 1832-33 was technically, as we have seen, notice of an embargo and not of a blockade. The regularity of the French notice of the blockade of the Tagus in 1831 is open to serious question,²⁰⁶ though Hogan asserts that the French Admiral did give notice to the British representatives. The blockade of Norway in 1814 affected neutral vessels. On the other hand all the evidence indicates that the hostile demonstration against Turkey in 1827, against the Netherlands in 1832-3, and against the government of the Pretender Don Miguel in 1831 did not affect neutral shipping but only the vessels of the blockaded state. The blockades of New Granada in 1837 and of Nicaragua in 1842 and 1844 were made the subjects of official notice, though how far third powers had advance notice in the case of New Granada is not evident. Hogan is authority for the statement that in the blockade of Nicaragua of 1844, English, Genoese and French vessels were turned away from the port.²⁰⁷ In fact, in all three cases, it is apparent that neutral shipping was affected. In other words, at this point of time, England apparently took the position that it was entirely consistent with the principles of international law to put neutral commerce under disabilities. The evidence is ample that the French assumed the right to interfere with neutral shipping in Mexico in 1838 and exercised it. The same is true of the Argentine blockades of 1838 and of 1840-45. British, Brazilian and Argentine vessels were seized and condemned by the French prize courts in 1845.

It is in connection with this last named blockade that Lord Palmerston made his famous utterance, already noted, to the effect that the French and English blockade of the La Plata was from first to last illegal. From this time a change of policy on the part of Great Britain is—with one lapse presently to be noted—apparent. Beginning with the blockade of Greece in 1850, there is a reversal of the position taken in the cases of New Granada and Nicaragua. Neutral shipping in the main was not interfered with; Greek ships alone were affected. Neither in 1861-62 was there any interference with neutral shipping in the waters of Brazil, if this hostile demonstration is to be viewed in any sense a blockade at all. The blockade of Gaeta and Messina made no attempt to interfere with the commerce of neutral vessels, except insofar as such vessels attempted to render aid to the besieged. A departure from the modern British policy is to be found in the case of the blockade of Dahomey in 1876. This blockade by its terms did affect neutral vessels. Beginning in 1884, a sharp difference of opinion between Great Britain and France mani-

²⁰⁶ 18 *British State Papers* (1831) 361-85, 391.

²⁰⁷ Hogan, *Pacific Blockade* (1908) 97.

festated itself with respect to the conduct of the Formosan blockade. France, in the development of its Colonial policy, came to champion the idea that it was justified in establishing a blockade in time of peace which should affect neutrals. It is at this point that England seems to have swung definitely over to the side of those who maintain that a blockade interfering with neutral shipping is a belligerent blockade and this attitude was accentuated in 1894 in the case of Siam and again in 1902 in the case of Venezuela. In the light of this later position, Premier Balfour's declaration in the House of Commons takes on an added significance. It remains to be said that in 1886 in Greece, and again in 1897 in Crete, concern was shown for neutral shipping.

To sum up all the evidence, France must be regarded as the chief advocate of a form of the pacific blockade closely assimilating in many of its incidents to the full-fledged belligerent institution. Great Britain's real position, if involved in some doubt, plainly enough clashes with the French view and just where the Continental Powers stand, whether with Great Britain or France, has not been made evident. The one thing certain is that, until the British position is clarified, the conditions surrounding the practice must remain more or less undefined. There is certainly nothing in the record to justify the conclusion that the traditional first naval power of the world definitely condemns the pacific blockade *in toto*, but there is cumulative evidence that her recent policy is virtually in accord with the unofficial Institute Declaration of 1887. This also seems to be the position of the United States.

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